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8 Attorneys for the Plaintiffs

9 IN THE UNITED STATES DISTRICT COURT

10 RICHARD FIDLIN, COAST TOWING, INC,
11 an Oregon Corporation, WALDPORT ALL
12 METALS RECYCLING LLC, an Oregon
13 Limited Liability Company, B & R
14 LEASING, LLC, an Oregon Limited Liability
15 Company and NEWPORT MOTORS LLC an
16 Oregon Limited Liability Company

17 Plaintiffs

18 vs.

19 CITY OF WALDPORT, An Oregon
20 Municipality

Defendant.

No. 6:23-CV-00157-MC

Lincoln Co Court Case No. 22CV44123

**AMENDED COMPLAINT FOR
INTENTIONAL INTERFERENCE OF
BUSINESS RELATIONSHIP, CIVIL
RIGHTS VIOLATION (42 USC 1983)
AND DEFAMATION**

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION per ORS
36.405(1)(a).

21 Plaintiffs alleges:

General Facts

22 1.

23 At all times material herein Plaintiff Richard Fidlin (“Fidlin”) was a resident living in
24 Waldport, Oregon and has conducted business in the central coast area including Waldport
25 and Newport, Oregon. While doing business therein he was a member in B & R Leasing,
26 LLC; a shareholder and officer of Coast Towing, Inc; and was a member of Waldport All
Metals Recycling LLC and Newport Motors LLC.

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2.

At all times material herein, Plaintiff Coast Towing, Inc is an Oregon Corporation authorized to do business in the State of Oregon. (“Coast Towing”). Coast Towing’s office is located in Lincoln County, Oregon and conducts business as a tow truck company operating out of Newport, Oregon, Waldport, Oregon, and the Central Coast area. Coast Towing has a Tow Business Certificate through the Oregon Department of Transportation to conduct business as a tow truck operation which includes towing and storage.

3.

At all times material herein, Plaintiff B & R Leasing LLC is an Oregon Limited Liability Company authorized to do business in the State of Oregon with offices located In Lincoln County, Oregon (“B & R”). B & R is the owner of real property located at 1129 Hwy 101 Waldport, Oregon (“Property”) and property adjacent thereto.

4.

At all times material herein Plaintiff Newport Motors LLC is an Oregon Limited Liability Company authorized to do business in the State of Oregon with offices located in Lincoln County, Oregon (“Newport Motors”). Newport Motors principally buys and sells used motor vehicles.

5.

At all times material herein Plaintiff Waldport All Metals Recycling LLC is an Oregon Limited Liability Company authorized to do business in the State of Oregon with offices located in Lincoln County, Oregon (“WAM”). WAM planned to do business as WAM Towing and does business as WAM Recycling LLC. WAM is licensed as a dismantler through Oregon Department of Transportation. WAM planned to operate as a Tow Truck Operator and to manage a wrecking yard located adjacent to the Property as part of its recycling metals and used car parts.

6.

At all times material herein Defendant City of Waldport is a municipality incorporated and located in the Central Coast in the State of Oregon. (“Waldport”). At all times material herein Dann Cutter was and is employed by Waldport as its City Manager and acted on behalf of and within the scope of his authority as City Manager (“Cutter”).

7.

At all times material herein Defendant Waldport manages multiple departments that govern and regulate the issuance of business licenses, processing of Planning, Zoning, Land Use and Public Safety issues. In the exercise of its authority Waldport works closely with and “partners” with State and Federal Governmental agencies including but not limited to Lincoln County Sheriff, Oregon State Police, Department of Environmental Quality, Oregon Department of Transportation, the Oregon Department of Motor Vehicles, and Department of State Lands.

8

Plaintiffs satisfied the requirements of ORS 30.275 by sending a Tort Claims Notice dated August 2, 2022 on or about August 3, 2022.

Count One

Intentional Interference of Business Relationship

Claims of Coast Towing, WAM, B & R Leasing, and Newport Motors

9.

By this reference Plaintiff's realleges those matters contained in paragraphs 1 through 8 of this Complaint and by this reference incorporate these allegations herein.

10.

At all times material herein the Plaintiffs operated a series of businesses as described above in paragraphs 2 through 6 and were generally held in high regard in the community.

11.

On or about February 2, 2021, Fidlin acquired the property located at 1129 Hwy 101 Waldport, Oregon (“Property”) in the name of B & R which is adjacent to the property operated as a tow yard by Coast Towing and owned by WAM. Fidlin thereafter had interest in the development of the Property, employed a Planner Consultant and Architect and met with Waldport’s planner in approximately August of 2021. During meetings with Waldport’s planner Fidlin was advised by the City of Waldport that Central Coast Fire District (“Fire District”), which services Waldport, had interest in acquiring the Property for the purpose of building a new fire station at the location of the Property. Thereafter Fidlin spoke with members of the fire district board who expressed strong interest in purchasing the Property but advised that the Fire District would not be able to commit to a purchase until March of 2022. The Waldport Planner stated that by selling both the Property and the adjacent properties, and delaying the planned development Coast Towing and WAM could move to Waldport’s planned industrial park. Fidlin, in reliance on these representations by Waldport chose to delay development on the Property. As part of this same representation, Fidlin was informed that there would be interest in acquiring the adjacent property owned by Plaintiffs.

12.

Between 2018 through 2020 Waldport attempted to purchase this same Property from Oregon Coast Community College for the purpose of relocating the Waldport City Hall and the construction of a new fire station for the Fire District. This project was referenced as the Joint Relocation Project. Instead of following through with an attempt to purchase the properties Waldport and Cutter intentionally interfered with B & R ownership in the Property and the operation of Plaintiffs' businesses through improper means and/or for an improper purpose in one or more of the following:

A. Refusing to renew the business license of Coast Towing and WAM;

1 B. Attempting to get the properties classified as EPA Brownfield which is a
2 program created to make it much easier for Cities and Other Governments to take possession
3 of, redevelop and improve abandoned and “underused” industrial sites;

4 C. In preventing WAM from operating as a dismantler and Coast Towing from
5 operating as a Towing Operation causing the nonconforming use status for the operation of
6 dismantling and a tow yard on the adjacent property to expire in March of 2023;

7 D. Making false and unjustified complaints to local, state and federal agencies;

8 E. Issuing a Cease and Desist Order without the required prior notice or
9 justification as called for in the Waldport Municipal Code (5.04.037 Revocation/Suspension
10 Of License);

11 F. Knowing that there was no immediate health hazard or threat to the
12 environment, Cutter directed City Recorder Reda Eckerman to issue citations against
13 Plaintiffs with daily fines of \$5,500 with a stated goal of making the fines more than the
14 plaintiffs could pay, resulting in Waldport acquiring the property through fine lien
15 foreclosure and prompting the Waldport Mayor to publically state “We are also shutting
16 down businesses that are a threat to our ground water and environment or doing things not
17 authorized within the City limits” which quote was directed at the plaintiffs..

18 G. Making false and unjustified complaint to Department of Environmental
19 Quality (“DEQ”);

20 H. Making the same false and unjustified complaint rejected by DEQ to state and
21 local officials with the intent of misleading them into the conclusion that Plaintiffs are an
22 environmental blight on the community, guilty of criminal activity, and should no longer be
23 allowed to operate its businesses;

24 I. In falsely representing to these state and local officials that the DEQ
25 investigation was on going knowing that DEQ had already closed its investigation after an
26 inspection;

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1 J. In falsely representing that the properties contained wetlands knowing that
2 both the DEQ and Waldport had inspected the properties and the wetlands inventories
3 confirmed the absence of wetlands on lot 1129 and incorrectly identified one on lot 500.

4 K. In contacting the Oregon State Police Department (“OSP”) and Lincoln
5 County Sheriff’s office (“Sheriff”) and causing Coast Towing to be removed from the non-
6 preference tow list and/or causing the number of calls from OSP and Sheriff to Coast Towing
7 to be reduced.

8 L. In attempting to get Plaintiff’s business licenses restricted and/or revoked;

9 M. In falsely stating and representing that WAM and Coast Towing were out of
10 business;

11 N. In falsely representing to the Lincoln County Sheriff’s office that Coast
12 Towing truck drivers were illegally operating their trucks in the City of Waldport attempting
13 to get the drivers arrested and/or cited;

14 O. In falsely representing to the Lincoln County Sheriff’s office that Coast
15 Towing trucks were illegally parked on public streets when the trucks were parked on private
16 property owned by the Plaintiffs, going so far as to begin the impound process by affixing the
17 24hr tow away notice on the vehicles;

18 P. In making the false misrepresentations listed above to Quentin Smith
19 (“Smith”) the operator of Yachats News and that Plaintiffs were illegally operating as alleged
20 herein; and

21 Q. In operating a drone over the Plaintiffs property and gathering information
22 thereby in violation of ORS 837.310 and ORS 837.360.

23 13.

24 The actions of Waldport interfered with the business of the Plaintiffs and its business
25 relations and/or advantage causing damage to Plaintiffs in the sum of
26

A. Coast Towing Economic damages in the sum of \$400, 000 through the end of 2022 and lost future profits of \$400,000;

B. WAM Economic damages in the sum of \$50,000 and lost future profits in the sum of \$50,000;

C. B & R Leasing in the sum of \$150,000 to remove the vehicles and metal in various stages of dismantle and scraping located on the adjacent properties following the loss of its nonconforming use authorization; and

D. Newport Motors in the sum of \$50,000 and lost future profits in the sum of \$50,000.

Count Two

Violation of Civil Rights 42 USC 1983

Claims of Coast Towing, WAM, B & R Leasing, and Newport Motors

14.

By this reference Plaintiff's realleges those matters contained in paragraphs 1 through 8, 10 through 12 and 13 of this Complaint and by this reference incorporate these allegations herein.

15.

At all times material herein Cutter was acting under the color of law as "Code Enforcer" and City Manager of Waldport. The actions of Waldport and Cutter violated the rights of Plaintiffs granted to them by the ordinances of Waldport, state and federal statutory and constitutional rights in at least, but not necessarily limited to, the following particulars:

A. The City of Waldport and Cutter violated Plaintiffs' rights to procedural due process by, among other things, depriving Plaintiffs of their business licensure without the requisite notice and opportunity to be heard. The City and Cutter deprived Plaintiffs of their

1 property interest, in violation of the Due Process clause, by impairing Plaintiffs' business
 2 goodwill within the community and by depriving Plaintiffs of any economically beneficial
 3 use of their property.

4 B. The City of Waldport and Cutter violated Plaintiffs' rights to substantive due
 5 process by arbitrarily and irrationally attempting to have Plaintiffs' property classified as an
 6 EPA "Brownfield," by issuing daily citations to Plaintiffs in the amount of \$5,500 in the
 7 absence of any immediate health hazard to the public or environment as a result of Plaintiffs'
 8 use of their property, by making false and unjustified complaints to the Oregon DEQ, by
 9 falsely representing that Plaintiffs' property contained wetlands, and by making false
 10 representations to law enforcement and others regarding Plaintiffs' businesses that served no
 11 legitimate government purpose and that impaired Plaintiffs' business goodwill and ability to
 12 generate profit from their businesses.

13 C. The City of Waldport and Cutter took Plaintiffs' property for public use
 14 without just compensation in violation of the Fifth Amendment Takings Clause. The City of
 15 Waldport and Cutter subjected Plaintiffs to a course of conduct intended to oust Plaintiffs
 16 from their property, as evidenced by the \$5,500 daily fines that were asserted upon Plaintiffs'
 17 property, the attempt by Waldport and Cutter to have Plaintiffs' property classified as an
 18 EPA Brownfield, and by Waldport and Cutter's false and unjustified complaints to other
 19 government agencies. As a result of regulations by the City of Waldport, Plaintiffs lost all
 20 economically beneficial use of their property. By virtue of Waldport's regulation, Plaintiffs
 21 were in fact ousted from their property.
 22
 23

16.

Plaintiffs are entitled to their attorney fees pursuant to 42 USC 1988.

Count Three

Defamation

Claim of Fidlin Only

17.

By this reference Plaintiff Fidlin realleges those matters contained in paragraphs 1 through 8 and 10 through 11 of this Complaint and by this reference incorporate these allegations herein.

18.

By this reference Plaintiff Fidlin realleges those matters contained in sub paragraphs D, F, G, H, I, J, M, N, O, and P of paragraph 12 of the Complaint and by this reference incorporate these allegations herein.

19.

Cutter intentionally and while acting with malice published the false statements previously alleged knowing that the publication would and actually caused Fidlin and his businesses harm.

20.

Fidlin as a direct and proximate cause of the publication of the false statements was damaged in one or more of the following particulars

A He suffered public humiliation and emotional pain and suffering in the sum of \$50,000 in Non-economic damages; and

B Economic damages as alleged in paragraph 13.

WHEREFORE, Plaintiffs demand a monetary judgment against the defendant:

(a) For Count 1 a monetary Judgment in favor of Coast Towing for \$800,000, WAM for \$100,000, B & R Leasing for \$150,000 and Newport Motors for \$100,000 against Defendant;

(b) For Count 2 a monetary Judgment in favor of (Coast Towing for \$800,000, WAM for \$100,000, B & R Leasing for \$150,000 and Newport Motors for \$100,000, and Plaintiffs' attorney fees;

(c) For Count 3 a monetary judgment in favor of Fidlin against Defendant in the sum of \$50,000; and

(d) Plaintiffs' costs and disbursements incurred herein.

Respectfully submitted, this 20th day of February, 2023.

/s/ Robert J Custis
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Attorney for Plaintiffs